ORDER.

Bangalore, dated the, 8th July 1965.

S. O. 2796.—WHEREAS by State Government Order No. PLM 205 LLD 63, dated 29th May 1963, the Industrial Dispute between the Workmen and the Management of Six Cashew Industries, Mangalore was referred to the Industrial Tribunal, Bangalore, for adjudication;

AND WHEREAS before the said Industrial Tribunal, a complaint was made under Section 33A of the Industrial Disputes Act, 1947, (Central Act No 14 of 1947), by Smt. Laura *alias* Bagi an employee of M/s Peirce Leslie and Co., Ltd, Bunder, Mangalore, for an alleged contravention of the provisions of section 33 of the said Act. by the employers;

AND, WHEREAS the said Industrial Tribunal, adjudicated upon the said complaint and submitted its award to the State Government as required under Section 15 read with Section 33A of the said Act;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act, No. 14 of 1947) the Government of Mysore, hereby directs the publication of the said award in the *Mysore Gazette*.

[No. PLM 205 LLD 63 (ii).]

By Order and in the name of the Governor of Mysore,

514 G. G. PUROHIT, *Under Secy.*

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated the 19th June 1965.

Sri R. Krishna Setty, B.A., LL.B., Presiding Officer.

Complaint No. 6 of 1965 in/I. D. No 15 of 1964.

Complainant:— Smt. Laura *alias* Bagi, D/o Benadict, Sweeper, C/o The Cashew, Coffee, Cardamom and Allied Workers' Union, Gujjerikare, Jeppu, Mangalore.

Vs.

Opposite Party—.The Management of Messrs. Peirce Leslie and Co., Ltd., Bunder, Mangalore.

APPEARANCES

For the Complainant, Sri K. Sashidhar Rao, B. A., LL, B., Advocate, Felix Pai Bazaar, Mangalore-1.

For the Opposite Party :—Sri K. Venkappa Rai, Manager, Peirce Leslie and Co., Mangalore.

Reference :— G. O. No. PLM 205 LLD 63 dated 29th May 1963.

This purports to be a complaint under Section 33-A of the Industrial Disputes Act, 1947, by an aggrieved workman against her employer for an alleged contravention of the provisions of Section 33 of that Act.

(2) It is alleged that the complainant was working as a sweeper in the Maidan Coffee Works, belonging to the Opposite Party and latter closed it with effect from 1st December 1964, that before doing so, the Opposite Party had offerred an employment to her and other workers in their other two factories at Jeppu and Kulshekar and that she applied for work at Jeppu Factory and that although she had been reporting herself at the said Jeppu Works, she had not been given employment and therefore this Tribunal should interfere in the matter and see that she is not deprived of employment.

(3) This complaint has not been verified by her but by some unknown person said to be a Municipal Councillor of Mangalore.

(4) The Opposite Party represented by the Manager, characterised the complaint as frivilous and added that the verification in the complaint has been made by a party unconnected with the industry and the complaint is not in accordance with law. On

merits, it was admitted that this Party has closed its Maidan Factory with effect from 1st December 1964 and though had offerred alternative employment to all the workers in their other factories at Jeppu and Kulshekar yet none of the workers working in the Maidan factory had accepted that alternative employment or indicated his intention of accepting employment as required in their notices and that the complainant also having failed to indicate her acceptance to work in anyone of the two factories within a reasonable time, she could not come forward at this late hour and say that she is prepared to work in Jeppu Factory. It was above all stated that there has been no contravention of Section 33 of the Industrial Disputes Act, 1947, warranting the present complaint under Section 23-A of that Act and the same is liable to be dismissed.

(5) It is an admitted fact that the Opposite Party has notified to all its workers working in Maiden Coffee Works that the said Factory would be closed with effect from 1st December 1964. It is also admitted fact that the Opposite Party had offerred alternative employment to them in their factories at Jeppu and Kulshekar. The grievance of the complainant is that though she was always ready and willing to work in Jeppu Factory, the Management did not give her any employment there. The question for consideration, therefore, is that even assuming for the sake of argument, that her complaint is well founded whether she is entitled to make the present complaint under Section 33-A of the Industrial Disputes Act, 1947. It is true that during the pendency of any proceedings before the Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute alter to the prejudice to the workman concerned in such dispute, the condition of service applicable to them immediately before the commencement of such proceeding. The meaning of the expression " in any matter connected with the dispute found in Section 33 of the Industrial Disputes Act, 1947, was the subject matter of several decisions. It has been held in Sridharan Motor Service, Attur, *vs.* Industrial Tribunal, Madras and others, reported in 1959 I LLJ 380 that when the pending dispute related to fixation of basic wage-scales for the concerned workmen, change effected by the employer in working hours or spread over of working hours could not be considered to be in respect of matter connected with the pending dispute within the meaning of Section 33 of the Industrial Disputes Act. Similarly in Pali Electricity Company, Ltd. -*Vs*- Industrial Tribunal and another reported in 1959 I LLJ 282, it was held that when

the dispute related to Bonus for the previous two years, the question of deduction from the current wages could not be considered to be a matter "connected with the dispute." The Madras High Court in Sandanaswami pillai-*Vs*- Ponnuswamy and others reported in 1959 II LLJ 791 held that when pending adjudication of a dispute relating to revision of the rates of wages, the employer retrenched workman without complying with the provisions of Section 25 F of the Act, the concerned workman could not file an application under Section 33-A of the Act complaining against their retrenchment. Even assuming that the retrenchment contravened S. 25F of the Act, the labour Court would have no jurisdiction to make any order under Section 33-A of the Act. If the worker was aggrieved, he should have gone to the appropriate authority under Section 33 C of the Act.

(6) In the present case, the dispute that was pending before this Tribunal in I. D. No. 15 of 1963, related to revision of wages, Dearness Allowance, Payment of Bonus in addition to the Gratuity Scheme. During the pendency of such a dispute, the Management closed its business in Maidan Coffee Works and offerred alternative employment to the worker in their two other factories at Jeppu and Kulshekhar. The complaint now is that the complainant was not given the alternative employment. The closing down of the concern, the offering of alternative employment to the workers and refusal by the Management to give employment to one of the employees as offered, in my opinion, cannot be said to be matters connected with the dispute in I. D. No. 15 of 1963. No application under Section 33-A of the Industrial Dispute Act, 1947, can lie. The proper remedy to the complainant would be under Section 25FFF read with Section 33 of the Industrial Disputes Act, 1947.

(7) For these reasons, I am of opinion that the complaint is unsustainable in law and is liable to be rejected in limine.

(8) In the result, I make an Award rejecting the complaint.

R. KRISHNA SETTY,
Presiding Officer, Industrial Tribunal,
Bangalore.